

BOARD OF APPEALS CASE NO. 5196

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BEFORE THE

APPLICANT: Gary & Kelli Miller

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ZONING HEARING EXAMINER

**REQUEST: Variances for an existing 6 foot high
fence and shed within the required setbacks;
401 Whitaker Mill Road, Fallston**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 11/28/01 & 12/5/01

HEARING DATE: January 7, 2002

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Record: 11/30/01 & 12/7/01

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ZONING HEARING EXAMINER'S DECISION

The Applicants, Gary & Kelli Miller, are seeking a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow a fence higher than 4 feet (existing 6 feet), and a variance pursuant to Section 267-26C(5)(b), to allow a shed within 3 feet of the property line (1 foot existing) in an RR/Rural Residential District.

The subject parcel is located at 401 Whitaker Mill Road, Fallston, MD 21047 and is more particularly identified on Tax Map 55, Grid 2E, Parcel 776, Lot 2. The subject parcel consists of 0.65± acres, is zoned RR/Rural Residential and is entirely within the Third Election District.

Mr. Gary E. Miller appeared and testified that he owns a corner property bordering Whitaker Mill Road and Terry Way. He constructed a 6 foot fence along Terry Way that ties into his neighbor's fence. The fence is designed for privacy and noise reduction which are needed because of the corner configuration of the lots. According to the Applicant his young children play in the yard and a four foot fence is inadequate to protect their safety. Without the variance for the fence, the Applicant stated that complying with the 40 foot setback would eliminate any yard on his property that could be adequately fenced. The witness also stated that he removed tall pine trees along Terry Way which interfered with sight distance and felt that installation of the fence in lieu of those trees increased safety and provided necessary security. As to the location of the shed – it has been there for 8 years without any issues. The fence screens the shed from view of passersby and serves the same purpose as increased setback distance according to the witness.

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If the variance were not granted, the Applicant would need to hire professional movers to relocate the shed which would simply decrease the usable portion of his yard without providing any benefit to neighboring properties. The Applicant did not feel as though any adverse impacts would result from the grant of his requests.

The Department of Planning and Zoning investigated this request and concluded that the subject property was uniquely configured, that a 6 foot fence would provide enhanced security and noise reduction without adverse impacts to adjoining and/or neighboring properties and recommended approval of the fence height requested. Similarly, the Department agreed that the placement of the shed coupled with the existing fence satisfied the purposes and intent of the Code and recommended approval of the variance requested.

There were no persons who appeared in opposition to the request.

CONCLUSION:

The Applicants are seeking a variance, pursuant to Section 267-24B(1) of the Harford County Code, to allow a fence higher than 4 feet (existing 6 feet), and a variance pursuant to Section 267-26C(5)(b), to allow a shed within 3 feet of the property line (1 foot existing) in an RR/Rural Residential District.

Section 267-24B(1) of the Harford County Code provides:

“Fences and walls. Fences and walls may be located in required yards in accordance with the following:

- (1) Front yards. For single-family detached units, walls and fences shall not exceed four feet in height above ground elevation. Where fences and walls are an integral part of the unit design and are applied in a consistent and coordinated pattern throughout the project, fences and walls may be constructed to a maximum of six feet above ground elevation. For continuing care retirement communities, consistent and coordinated fencing or walls may be constructed to a maximum of eight feet above ground elevation provided strategically located gates are provided for emergency access.”

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Section 267-26C(5)(b) of the Harford County Code provides:

“Uses and structures.

- (b) Residential detached accessory structure: six (6) feet from any principal structure and three (3) feet from side or rear yard lot lines except for lots with recorded easements. For lots with recorded easements, the setback shall be equal to the width of the recorded easement.”

The Harford County Code, pursuant to 267-11 permits variances and provides:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

The Hearing Examiner finds that the property is unique because of its size and corner configuration. The proposed fence height and shed location will not result in adverse impacts to adjoining properties nor will the purposes of the Harford County Zoning Code be impaired. Removal of large pine trees has resulted in increased safety and the proposal is in line with other corner lots commonly found in Harford County.

The Hearing Examiner recommends approval of the request variances, subject to the conditions that the Applicants obtain any and all necessary permits and inspections.

Date: JANUARY 30, 2002

William F. Casey
Zoning Hearing Examiner